

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

YOLANDA FREDERICK,

Plaintiff,

:

Case No. 3:11-cv-288

-vs-

:

District Judge Thomas M. Rose  
Magistrate Judge Michael R. Merz

WAL-MART, INC, et al.,

Defendants.

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**DECISION AND ORDER DENYING MOTION TO COMPEL**

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This case is before the Court on Plaintiff's Motion to Compel the attendance of Rick Sicotte at a deposition in this case (Doc. No. 24). Defendants respond that they do not oppose Plaintiff's request or right to depose Mr. Sicotte or deny that he may have relevant information, but note that he is no longer an employee of Wal-Mart, Inc., and therefore not within Defendants' control (Doc. No. 25). This is consistent with Plaintiff's description of Mr. Sicotte as a "former Store Manager at Wal-Mart, Inc." (Motion, Doc. No. 24, at PageID 94.)

Since Mr. Sicotte is neither a party to the case nor an employee of Defendants, his presence at a deposition cannot be compelled on a motion under Fed. R. Civ. P. 37, which speaks to a party's failure to participate in discovery in various ways. In some sense, Plaintiff appears to have recognized this fact because she claims Mr. Sicotte was properly served with a subpoena (Motion, Doc. No. 24, PageID 95.)

Because Mr. Sicotte is not a party or a person under the control of the Defendants, the Motion to Compel is DENIED. Plaintiff's remedy must be by way of enforcement of the

subpoena, e.g., by motion for an order to show cause why Mr. Sicotte should not be held in contempt of court for failure to obey the subpoena. See Fed. R. Civ. P. 45(e).

April 16, 2013.

s/ *Michael R. Merz*  
United States Magistrate Judge